



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO POWHATAN COUNTY FOR DUTOY CREEK WASTEWATER TREATMENT PLANT VPDES Permit No. VA0090727

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Powhatan County, regarding the Dutoy Creek Wastewater Treatment Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "CBOD" means carbonaceous biochemical oxygen demand.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “DMR” means Discharge Monitoring Report.
9. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. “EPA” means Environmental Protection Agency.
11. “Facility” or “WWTP” means the Dutoy Creek Wastewater Treatment Plant located at 2040 Anderson Highway, Powhatan County, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of Powhatan County.
12. “Powhatan” means Powhatan County, a political subdivision of the Commonwealth of Virginia. Powhatan is a “person” within the meaning of Va. Code § 62.1-44.3.
13. “MGD” means millions of gallons per day.
14. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
15. “O&M” means operations and maintenance.
16. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
17. “Permit” means VPDES Permit No. VA0090727, which was issued under the State Water Control Law and the Regulation to Powhatan on February 6, 2013, and which expires on January 31, 2018.
18. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,

radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

19. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
20. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
21. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
22. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
23. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
24. "TKN" means total kjeldahl nitrogen.
25. "TMDL" means total maximum daily load.
26. "TSS" means total suspended solids.
27. "Va. Code" means the Code of Virginia (1950), as amended.
28. "VAC" means the Virginia Administrative Code.
29. "VPDES" means Virginia Pollutant Discharge Elimination System.
30. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Powhatan owns and operates the Facility. The Permit allows Powhatan to discharge treated sewage and other municipal wastes from the Plant, to an unnamed tributary of Dutoy Creek, in strict compliance with the terms and conditions of the Permit. Dutoy Creek is located in the James River (Middle) Basin.
2. During the 2014 Water Quality Assessment 305(b)/303(d) Integrated Report, the tributary was not assessed for any designated use; it was therefore considered a Category 3A waterbody. The Dutoy Creek WWTP is located within the study area for the James River and Tributaries – City of Richmond Bacterial TMDL (EPA approval November 4, 2010, Board approval June 29, 2012). The discharge received an E. coli wasteload allocation of 4.36×10^{11} cfu/year. The Facility was also addressed in the Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010. The TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and submerged aquatic vegetation criteria in the Chesapeake Bay and its tidal tributaries. The Facility was included in the aggregated loads for non-significant wastewater dischargers in the upper tidal freshwater James River estuary. The tributary is designated as a Public Water Supply. During low flow conditions, there is a lack of connectivity between the unnamed tributary and Dutoy Creek due to a large beaver dam which also depresses the dissolved oxygen in the tributary; therefore, it has been considered a Tier 1 water. Dissolved oxygen levels in mainstem Dutoy Creek are acceptable and the stream is considered a Tier 2 water.
3. In submitting its DMRs, as required by the Permit, Powhatan has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, for total zinc in June, August, September and October 2015, TKN in September 2015, Ammonia in September 2015, and TSS in October 2015. Powhatan staff stated that the TSS and CBOD excursions were due to an operational change to four hour cycles in SBR #1 due to high water levels in the equalization basin. Powhatan further stated that the four hour cycle times reduced the settling time and caused increased levels of TSS and CBOD, and when the cycle time was changed to six hours TSS and CBOD came back into compliance with the Permit limit.
4. On December 10, 2015, the Department issued Notice of Violation number W2015-12-P-0002 to Powhatan for the effluent violations mentioned in C.3 above. On December 22, 2015, the Department met with Powhatan County to discuss the NOV. In the meeting Powhatan staff presented a timeline and explanation of the Permit excursions along with receipts for equipment that was purchased and installed to address the zinc, ammonia, and TKN Permit excursions. Powhatan staff stated that the TSS and CBOD excursions were due to an operational change to four hour cycles in SBR #1 due to high water levels in the equalization basin. Powhatan further stated that the four hour cycle times reduced the settling time and caused increased levels of TSS and CBOD, and when the cycle time was changed to six hours TSS and CBOD came back into compliance with the Permit limit.

5. On January 13, 2016, Powhatan County notified the Department it had exceeded the Permit limit for TKN in January.
6. On January 28, 2016, Powhatan County submitted to the Department a written notice and plan of action to ensure compliance with regards to the Facility's design flow.
7. On February 18, 2016, Powhatan County notified the Department it had exceeded the Permit limits for TKN. In March 2016, Powhatan submitted a DMR for the February 2016 monitoring period that reported four TKN violations, an average flow of .054 mgd verses a design flow of 0.50 mgd, and a maximum flow of .083 mdg.
8. On April 5, 2016, Powhatan County notified the Department it had exceeded the Permit limit for TKN and TSS on that day.
9. On August 17, 2016, Powhatan County notified the Department it had exceeded the permit limit for CBOD.
10. Between August 2016 and March 2017 the Facility had no violations. Powhatan County submitted a DMR for April 2017 indicating it had exceeded the Permit limit for TSS, TKN, ammonia, and CBOD.
11. Powhatan County submitted a DMR for July 2017 indicating it had exceeded the Permit limit for TKN.
12. Powhatan County submitted a DMR for August 2017 indicating it had exceeded the Permit limit for CBOD and TKN.
13. On September 13, 2017, the Department conducted a file review prior to meeting with staff at the Facility. The file indicates that the Facility has a design flow capacity in its current first tier configuration of 50,000 GPD. The April 2013 update of the 2006 Operation and Maintenance (O&M) manual states the Facility has two large sequencing batch reactor basins which are 40 feet by 30 feet by 24 feet (21 feet side water depth). Each basin has a maximum capacity of approximately 188,000 gallons at the maximum side water depth. One of the basins has a 15'-6" divider wall, which serves as SBR basins No. 1 and No. 2 during the first two operational phases. The Manual indicated when the treatment capacity of the Facility must be increased beyond 50,000 GPD, the wall should be removed and new equipment purchased for the second SBR basin.
14. Powhatan has reported excessive average flows in January, February, and May 2016. Powhatan staff stated that since the Permit specifies influent flow when determining Facility design capacities and County staff were recycling flow, a notification to the Department that 95% design flow had been reached was unnecessary.
15. On September 9, 2017, the Department provided the County with a draft Consent Order addressing the violations cited in the December 22, 2015 NOV, as well as the violations that have occurred since the issuance of the NOV.

16. On October 13, 2017, the Department met with Powhatan County Staff to discuss the draft. During the meeting, Powhatan Staff pointed out that the Permit requires a plan for a flow expansion upgrade when the influent flow reaches 95% not when the effluent flow does. The Permit requires the measurement of effluent flow and it is assumed that influent flow is equal to effluent flow, however the County recycles flow during wet weather and some of the recycle flow is counted twice. Powhatan staff stated that influent flow in October 2015 was 0.36 mgd, November 2015 was 0.30 mgd, and December 2015 was .042 mgd. For 2016, Powhatan staff stated they did exceed 95% of influent flow in March, April, and May of 2016 when they recycled wastewater back to the headworks of the Facility to maintain and clean equipment. January's influent flow was reported as .034 mgd, and February's was .030 mgd after accounting for recycle. Based on this information it does not appear that the County will need to move to the next permitted flow tier at this time.
17. Powhatan reported Permit effluent violations of Nitrate and *E coli* for the October 2017 monitoring period. In addition Powhatan reported two missed pH and dissolved oxygen samples in the November 2017 monitoring period.
18. Powhatan's operating logs indicate that it discharged treated wastewater from the Facility every day from April 1, 2015 through August 31, 2017.
19. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
20. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
21. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
22. VPDES Permit Part I.A.1. states that during the period beginning with the permit's effective date and lasting until the earlier of either the permit's expiration date or a Certificate to Operate (CTO) is issued for the 0.125 MGD or 0.250 MGD treatment works, the permittee is authorized to discharge from Outfall 001.
23. The Department has not issued a CTO to Powhatan for a flow expansion to the Facility.
24. VPDES Permit Part I.A.1.a. states that the design flow of this Facility is 0.050 MGD.
25. VPDES Permit Part I.B.2. "states a written notice and a plan of action for ensuring continued compliance with the terms of this permit shall be submitted to the DEQ Piedmont Regional Office when the monthly average flow influent to the sewage treatment works reaches 95 percent of the maximum design capacity authorized in this permit for each month of any three consecutive month period. The written notice shall be

submitted within 30 days and the plan of action shall be received at the DEQ Piedmont Regional Office no later than 90 days from the third consecutive month for which the flow reached 95 percent of the design capacity. The plan shall include the necessary steps and prompt schedule of implementation for controlling any current or reasonably anticipated problem resulting from high influent flows. Failure to submit an adequate plan in a timely manner shall be deemed a violation of the permit.”

26. The Department has issued no permits or certificates to Powhatan to discharge into Dutoy Creek other than VPDES Permit No. VA0090727.
27. The unnamed tributary of Dutoy Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
28. Based on the results of the DMR submittals from June 2015 through August 2017 by Powhatan County and the County’s January 28, 2016 correspondence, the Board concludes that Powhatan has violated the Permit Part I.A.1, Va. Code 62.1-44.5(A), and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described above.
29. Powhatan has submitted documentation to the Department indicating that the violations as described in Section C above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Powhatan, and Powhatan agrees to pay a civil charge of \$9,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Powhatan shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Powhatan shall be liable for attorneys’ fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Powhatan for good cause shown by Powhatan, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in NOV number W2015-12-P-0002 issued December 10, 2015 and described in Section C.4 of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Powhatan admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Powhatan consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Powhatan declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Powhatan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Powhatan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Powhatan shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Powhatan shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Powhatan. Nevertheless, Powhatan agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Powhatan has completed all of the requirements of the Order;
 - b. Powhatan petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Powhatan.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Powhatan from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Powhatan and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Powhatan certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Powhatan to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Powhatan.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Powhatan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2018.

Jefferson D. Reynolds
Enforcement Division Director
Department of Environmental Quality

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Notary seal:

Powhatan County voluntarily agrees to the issuance of this Order.

Date: 6/28/2018 By: Theodore L. Voorhees County Administrator
(Person) (Title)
Powhatan County

Commonwealth of Virginia

City/County of Powhatan

The foregoing document was signed and acknowledged before me this 27 day of

June, 2018, by Theodore L. Voorhees who is

County Administrator of Powhatan County, on behalf of the County.

Bonni G Johnston
Notary Public

338982

Registration No.

My commission expires: 11-30-2020

Notary seal:

